In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.2249 of 2006.

Date of decision:22.1.2007.

Haryana Labour Welfare Board, Chandigarh and another.

...Petitioners.

Versus

Vikas.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Raj Kumar Sharma Advocate for the petitioners.

Mr.Ram Kumar Malik Advoate for the respondent.

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Judgment.

S. N. Aggarwal, J.

The respondent was working as a Labour Inspector Welfare. Apprehending termination of his services, he had filed a civil suit for permanent injunction in the Court of Civil Judge (Senior Division), Rohtak on 10.1.1997. He also filed an application for interim stay. The said application was contested by the petitioners on the plea that post of Labour Inspector (Welfare) was abolished and,therefore, they had no option but to terminate the services of the respondent. Accordingly, application for interim stay filed by the respondent was dismissed by the learned trial Court vide order dated 11.6.2001 with the following observations:-

"In view of my discussion herein above the present application is dismissed. It is, however, made clear that in case the post of Labour Inspector (Welfare) is created again then the plaintiff shall have primary right to be considered for the said post."

The appeal filed against this order was also dismissed by the learned Lower Appellate Court.

Later on, the petitioners in the meeting held on 29.7.2002 passed the following resolution:-

". . . . . .In addition to this, Assistants/Accountants of the Board may be conferred with designation of Assistant Welfare Officer in their own pay scale, without any additional pay increase so that if need be, they may also be sent for inspection in the field under the provisions of the Act. It is, thus, proposed to the Board that all above officials/officers of Labour Department may be conferred with ex-officio designations mentioned therein."

Thereafter, vide order dated 10.8.2004, the officials so working as Assistant Welfare Officers were placed in the higher pay scale and the posts of Assistants/Accountants who were re-designated to function as Assistant Welfare Officers were declared as vacant and those posts were ordered to be filled up by promotion from the personnel holding clerical posts.

After this resolution was passed, the respondent filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC pleading that fresh posts have been created with a little difference in the

designation. Therefore, he should be appointed to the said post in accordance with the order dated 11.6.2001 passed on the application for interim stay in the said civil suit. It was further prayed that filling up the posts of Assistant Welfare Officers as proposed by the petitioners without considering the name of the respondent be stayed.

This application was accepted by the learned trial Court vide order dated 20.7.2005 and the Court passed the following operative order:-

> "For the discussion foregoing, the application for ad interim injunction is hereby allowed and the defendants are ordered to consider the plaintiff for the post of Assistant Labour Welfare Inspector before promoting/up-grading the Assistants/Accountants,till disposal of the suit."

Aggrieved against this order, the petitioners filed an appeal. The order passed by the learned trial Court was up-held and the appeal was dismissed by the learned Lower Appellate Court vide order dated 19.1.2006.

Hence, the present petition.

The learned counsel for the petitioners submits that the petitioners are merely re-designating the Assistants/Accountants as Assistant Welfare Officers in accordance with the resolution passed on 29.7.2002 (Annexure A) in the meeting held by the petitioner-Board. It was further submitted that the respondent cannot be awarded appointment under interim orders without his right being up-held in the civil suit. It was also submitted that originally the respondent had filed a civil suit restraining the petitioners from terminating his services and different kind of relief has been awarded by the learned trial Court vide order dated 20.7.2005 which

was beyond the scope of civil suit filed by him. Further submits that since the petitioners have been restrained from re-designating Assistant Welfare Officers, therefore, the work of the department is suffering.

On the other hand, the submission of learned counsel for the respondent was that the petitioners were violating the order dated 11.6.2001 passed by the Court in which the petitioners were directed to reconsider the case of the respondent in case the post of Labour Inspector (Welfare) is created. Since the new posts have been created by the petitioners, therefore, the impugned orders dated 20.7.2005 and 19.1.2006 passed by the Courts below did not suffer from any illegality.

These submissions have been considered. The petitioners merely re-designated the Assistants/Accountants as Assistant Welfare Officers as per resolution dated 29.7.2002 (Annexure A) and,therefore, the respondent has no right to be considered. On this analysis, therefore, the resolution dated 29.7.2002 passed in the meeting of Welfare Board is vacated and the orders passed by the Courts below qua that order are set aside.

But by resolution dated 10.8.2004 (Annexure B), the petitioners are adjusting Assistants/Accountants against the posts of Assistant Welfare Officers and granting them higher pay scale and are treating the posts of Assistants/Accountants as vacant and offering the vacant posts for promotion to the Clerks of the Department. Obviously,therefore, the petitioners are creating new posts of Assistant Welfare Officers to be filled by the Assistants/Accountants of the department. Therefore, the orders of the learned Courts below qua the decision taken by the petitioner Board in

its meeting held on 10.8.2004 are up-held.

The learned counsel for the parties submitted that the case is fixed in the learned trial on 7.2.2007. The submission of learned counsel for the petitioners was that the respondent is intentionally not concluding the evidence. However, after obtaining stay order the respondent has no right to delay the disposal of the civil suit. The learned trial Court shall grant only two opportunities to the respondent to produce the entire evidence at the most and if the respondent fails to conclude the evidence in two opportunities after 7.2.2007,then the evidence of the respondent shall stand closed.

This Civil Revision is disposed of in the above manner.

January 22,2007. (S. N. Aggarwal)
Jaggi Judge